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AmericanMotorcyclist.com

April 28, 2010

Chairman Bobby L. Rush
House Committee on Energy & Commerce
Subcommittee on Commerce, Trade &
Consumer Protection
US House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Ranking Member Ed Whitfield
House Committee on Energy & Commerce
Subcommittee on Commerce, Trade &
Consumer Protection
US House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Rush and Ranking Member Whitfield:

Founded in 1924, the American Motorcyclist Association (AMA) is the premier advocate of the motorcycling community. Along with our sister organization, the All-Terrain Vehicle Association (ATVA), we represent the interests of millions of on- and off-highway motorcyclists and all-terrain vehicle (ATV) riders nationwide. Our members are interested in any action that may affect their enjoyment of motorcycle or ATV recreation. In this regard, we write to express our encouragement for and concern with the current version of the Consumer Product Safety Enhancement Act (CPSEA) of 2010.

The motorized recreation community of enthusiasts supports Congress' effort to address the lead ban issue for youth-model motorcycles and ATVs that was brought about by the passage of the Consumer Product Safety Improvement Act (CPSIA) of 2008. However, with the enormity of the economic hardship caused to families that recreate and the industry, enthusiasts remain concerned that the current language of the CPSEA does not effectively address the issues that exist and may create additional barriers to industry and true market relief.

Section 2 of the current draft language attempts to provide additional flexibility to the Consumer Product Safety Commission (CPSC) in order to allow for exclusions from lead content limits of the CPSIA through a "functional purpose exception." Within the discussion section of this concept, the CPSEA currently lists three determinations that must be made in order to receive an exemption from the lead standards. However, each of those three factors has significant bearing on the effectiveness of the legislation's implementation for youth-model motorized recreation vehicles.

Paragraph (i) of Section 2 states that the petitioner must prove, "the product, material or component part requires the inclusion of lead because it is not practicable or not technologically feasible," to manufacture with decreased lead content. The lack of clear parameters for the phrase "not practicable" hinders the objective application of the required determination. Without the identifiable definition of what is or is not practicable, the burden of proof cannot clearly be met by any petitioner for exclusion from the relevant section in the original CPSIA. Clarification must be made as to who determines 'practicable' and what practicability will be applied to; whether the expense of removal or reduction is not practicable, the replacement material is not practicable, etc.

Paragraph (ii) of Section 2 of the current CPSEA does provide for an appropriate and effective elaboration of what is meant by "normal and foreseeable use." The youth-model motorcycle and ATV enthusiast community is supportive of the specification that the product, material or

component of concern is "not likely to be placed in the mouth or ingested." The burden of proof can clearly be met for the required determination for exception.

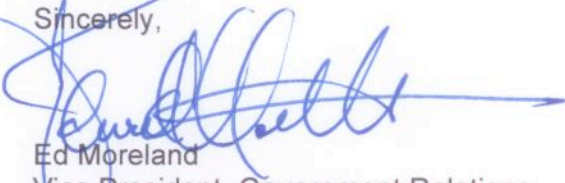
Paragraph (iii) of Section 2 of the current CPSEA, however, allows for an exception to be granted if doing so, "Will have no measurable adverse effect on public health or safety." The specification of "no measurable adverse effect" terminates the ability for a petitioner that qualifies under Paragraph (i) to receive an exclusion. Additionally, any granted exclusion may be litigated against based on the precedent set in recent legal proceedings surrounding phthalates in children's toys.

Lastly, Section 5, subsection (c), expands evidence collected in a subpoena to include physical in addition to documentary, but may have adverse impacts on pending litigation occurring outside of the scope of the CPSC. Releasing physical evidence to an investigatory body that may perform various methods of content testing could compromise the existing state of the object(s). The integrity of physical evidence in a pre-existing court case is central to reaching a judgment that will withstand challenge or appeal.

While the AMA, ATVA and motorized recreation enthusiast community we represent is encouraged by the attention of Congress to rectify original concerns with the CPSIA, the current draft of the CPSEA may create additional unintended consequences. It is the opinion of the enthusiast community that the legislation be revisited to clarify the aforementioned concerns.

Thank you for the opportunity to provide comment on the CPSEA and we look forward to continuing to work with Congress and the CPSC to exempt youth-model motorcycles and ATVs a finite exclusion from the lead content restrictions in the CPSIA.

Sincerely,



Ed Moreland
Vice President, Government Relations
American Motorcyclist Association

CC: Chairman Waxman
Ranking Member Barton
Members of the US House of Representatives Committee on Energy & Commerce